

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201609730	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/17/2016 8:52 PM	Location of Incident: Nostrand Avenue and Bergen Street; 77th Precinct stationhouse.	Precinct: 77	18 Mo. SOL 5/17/2018	EO SOL 5/17/2018	
Date/Time CV Reported Fri, 11/18/2016 1:43 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/23/2016 10:50 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alex Viera	14168	945080	077 PCT
2. POM Umar Khitab	20552	952929	077 PCT
3. An officer			077 PCT
4. POM Tahir Malik	06148	957799	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Roger Quintero	05330	943706	077 PCT
2. POM Ryan Riveron	23018	953320	077 PCT
3. SGT Gabriel Cuevas	02226	945633	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Umar Khitab	Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, Police Officer Umar Khitab used physical force against § 87(2)(b)	
B.POM Alex Viera	Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, Police Officer Alex Viera used physical force against § 87(2)(b)	
C. An officer	Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, an officer used physical force against § 87(2)(b)	
D. An officer	Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, an officer used physical force against § 87(2)(b)	
E.POM Tahir Malik	Abuse: At the 77th Precinct stationhouse, Police Officer Tahir Malik strip-searched § 87(2)(b)	
F. An officer	Abuse: At the 77th Precinct stationhouse, an officer strip-searched § 87(2)(b)	
G.POM Umar Khitab	Force: At the 77th Precinct stationhouse, Police Officer Umar Khitab used physical force against § 87(2)(b)	

Case Summary

On November 17, 2016, § 87(2)(b) filed this complaint with IAB (Log no. 2016-41067) (**01 Board Review**), which was received by the CCRB on November 23, 2016.

On November 17, 2016 at approximately 8:52 OM, § 87(2)(b) was driving in the vicinity of Nostrand Avenue and Bergen Street in Brooklyn when he was stopped for reckless driving by Sgt. Gabriel Cuevas, PO Umar Khitab, and PO Alex Viera, all of the 77th Precinct anti-crime team. PO Khitab asked § 87(2)(b) to step out of his vehicle. § 87(2)(b) asked PO Khitab why he was being asked to step out of the vehicle. PO Khitab allegedly opened § 87(2)(b) vehicle door, pulled § 87(2)(b) out of his vehicle by his left arm with PO Viera, and pushed him against his vehicle (**Allegation A, Allegation B**). An additional police vehicle, containing PO Ryan Riveron and PO Tahir Malik, also of the 77th Precinct, arrived to transport § 87(2)(b) to the 77th Precinct stationhouse, and the officers walked § 87(2)(b) to the vehicle. Once at the vehicle, an allegedly officer pushed § 87(2)(b) by his chest into the vehicle, causing him to fall backwards into the transport vehicle, and hit his head on the doorframe (**Allegation C**). The same officer then allegedly shut the door to the police vehicle on § 87(2)(b) legs (**Allegation D**). PO Riveron and PO Viera drove § 87(2)(b) to the 77th Precinct stationhouse. Sgt. Cuevas, PO Khitab, and PO Malik met § 87(2)(b). PO Riveron and PO Malik in the parking lot at the 77th Precinct stationhouse. PO Malik allegedly pulled § 87(2)(b) sweatpants down past his buttocks and patted down his groin area (**Allegation E, Allegation F**), and § 87(2)(b) felt an officer behind him put his hand down his pants, making contact with his buttocks. § 87(2)(b) asked the officers what the “fuck” they were doing, and they stopped, and began walking him into the 77th Precinct stationhouse. PO Khitab allegedly walked in front of the group, turned around, and punched § 87(2)(b) on the right side of his face. § 87(2)(b) stumbled as a result of the punch, and PO Khitab allegedly went behind § 87(2)(b) and punched him again on the right side of his head (**Allegation G**).

§ 87(2)(b) was arrested for unauthorized use of a vehicle, riot in the second degree, passing a vehicle on the right hand side, moving from a lane unsafely, failure to use designated lane, and failure to signal from a parked position.

There is no video footage regarding this incident.

This case is being submitted after the 90-day mark because of difficulty in scheduling officer appearances.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of April 12, 2017, a FOIL request to the Office of the Comptroller is pending.

• § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**14 Board Review**).
- PO Viera has been a member of service for nine years and has sixteen previous allegations, with no substantiations. PO Viera has six previous physical force allegations.
- PO Khitab has been a member of service for four years and has nine previous allegations, with no substantiations. PO Khitab has six previous physical force allegations.
- Sgt. Cuevas has been a member of service for nine years and has ten previous allegations, with no substantiations. Sgt. Cuevas has two previous physical force allegations.
- PO Riveron has been a member of service for four years and has no previous allegations.
- PO Malik has been a member of service for two years and has three previous allegations, with no substantiations or § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) (**02 Board Review**) alleged that as he was being placed in to the transport vehicle, that an officer pushed him by his chest, causing him to fall back in to the vehicle, and strike his head on the doorframe as he fell back. § 87(2)(b) did not see which officer pushed him, because he alleged that a group of five officers were surrounding him. None of the officers interviewed acknowledged pushing, or seeing any other officer push, § 87(2)(b) in to the vehicle. After § 87(2)(b) fell back in to the vehicle, his legs remained outside of the vehicle. An officer attempted to shut the vehicle door on § 87(2)(b) legs. § 87(2)(b) did not see which officer shut the door, because he was lying down on his back, and none of the officers interviewed acknowledged shutting the door on § 87(2)(b) legs, or observing any other officer do so. Therefore, Allegation C and D were pled against “an officer.”

§ 87(2)(b) alleged that in the parking lot outside of the 77th Precinct stationhouse, an officer pulled down his sweatpants and exposed his undergarments. § 87(2)(b) described the officer as the officer who was the passenger in the transport vehicle, and who appeared to be of Middle Eastern descent, was 6’0” tall, and had dark brown or black hair. PO Malik drove the transport vehicle, is of Middle Eastern descent, and is 6’1” tall. Therefore, Allegation E was pled against PO Malik.

§ 87(2)(b) alleged that after PO Malik pulled his sweatpants down, he felt an officer put his hand down the back of his pants, and made contact with his buttocks. § 87(2)(b) did not see which officer did this, because the officer was behind him, and there was a group of five officers surrounding him. None of the officers interviewed acknowledged putting their hand down the back of § 87(2)(b) undergarments, or seeing any other officer do so. The investigation was unable to determine the identity of the officer who allegedly put their hand down § 87(2)(b) undergarments. Therefore, Allegation F was pled against “an officer.”

Allegation A –Physical Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, Police Officer Umar Khitab used physical force against § 87(2)(b)

Allegation B- Physical Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, Police Officer Alex Viera used physical force against § 87(2)(b)

§ 87(2)(b) (02 Board Review) stated that when PO Khitab asked for his license and registration, that he supplied his license but did not have a registration, because the vehicle belonged to Zip Car. PO Khitab told § 87(2)(b) that he was not authorized to drive the vehicle, and that when § 87(2)(b) attempted to explain that he had been given permission by his mother (the Zip Car account holder), PO Khitab told him to exit the vehicle. PO Khitab opened § 87(2)(b) car door, and PO Khitab and PO Viera pulled § 87(2)(b) out of the vehicle, and then pushed § 87(2)(b) chest against his vehicle, where § 87(2)(b) car door met the rest of the vehicle, and handcuffed him.

Sgt. Cuevas (07 Board Review) stated that he instructed PO Khitab and PO Viera to place § 87(2)(b) under arrest once he refused to provide his license and registration, because he had committed multiple VTL infractions, was refusing lawful commands, and was yelling at PO Khitab and PO Viera from inside of his vehicle. Sgt. Cuevas did not see how § 87(2)(b) got out of his vehicle.

PO Khitab (04 Board Review) stated that § 87(2)(b) stepped out of the vehicle on his own and was not pulled out. § 87(2)(b) was placed against his vehicle to be handcuffed.

PO Viera (03 Board Review) stated that § 87(2)(b) refused to step out of his vehicle, and that he and PO Khitab reached in and pulled him out by his arms. § 87(2)(b) was placed against his vehicle and handcuffed.

According to Patrol Guide Procedure 221-02, an officer may apply no more than the reasonable force necessary to gain control of an arrestee (11 Board Review).

§ 87(2)(b), § 87(2)(g)

Allegation C- Physical Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, an officer used physical force against § 87(2)(b)

Allegation D- Physical Force: In the vicinity of Nostrand Avenue and Bergen Street in Brooklyn, an officer used physical force against § 87(2)(b)

As noted in the explanation of subject officers section, the investigation was unable to determine the identity of the officer who pushed § 87(2)(b) in to the transport vehicle and the identity of the officer who closed the vehicle door on § 87(2)(b) legs. § 87(2)(g)

Allegation E- Abuse of Authority: At the 77th Precinct stationhouse, Police Officer Tahir Malik strip-searched § 87(2)(b)

§ 87(2)(b) (02 Board Review) stated that he was transported to the 77th Precinct stationhouse by PO Riveron and PO Malik. PO Khitab, PO Viera, and Sgt. Cuevas were waiting for § 87(2)(b) in the parking lot outside of the 77th Precinct stationhouse, and began to walk § 87(2)(b) towards the stationhouse. § 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b)

§ 87(2)(b)

PO Malik (04 Board Review) stated that no other officers assisted him and PO Riveron in walking § 87(2)(b) in to the stationhouse. PO Riveron frisked § 87(2)(b) in the parking lot, because it is standard procedure to do so when an arrestee is being brought in to the stationhouse. PO Malik did not frisk § 87(2)(b) PO Malik did not pull § 87(2)(b) sweatpants down. § 87(2)(b) undergarments were not otherwise exposed. PO Malik's understanding of a strip-search is when a person is brought to a private room, asked to disrobe, and searched, after a supervisor is consulted.

PO Riveron (08 Board Review) did not recall if any other officers assisted him and PO Malik in walking § 87(2)(b) in to the stationhouse. § 87(2)(b) was frisked before entering the stationhouse, but PO Riveron did not recall if he or PO Malik performed the frisk. § 87(2)(b) sweatpants were not pulled down, and his undergarments were not exposed.

PO Khitab (06 Board Review) and Sgt. Cuevas (07 Board Review) stated that they assisted PO Riveron and PO Malik in walking § 87(2)(b) in to the 77th Precinct stationhouse. Neither PO Khitab nor Sgt. Cuevas pulled § 87(2)(b) sweatpants down, or otherwise observed § 87(2)(b) undergarments exposed. Sgt. Cuevas and PO Khitab both stated that PO Khitab conducted the frisk of § 87(2)(b) pockets, waistband, and chest were frisked.

PO Viera (03 Board Review) did not recall assisting in walking § 87(2)(b) in to the 77th Precinct stationhouse.

A strip-search is not noted in the command log (12 Board Review), or in § 87(2)(b) arrest report (10 Board Review).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation F- Abuse of Authority: At the 77th Precinct stationhouse, an officer strip-searched § 87(2)(b)

As noted in the explanation of subject officers section, the investigation was unable to determine the identity of the officer who pushed § 87(2)(b) in to the transport vehicle. § 87(2)(g)

§ 87(2)(b)

Allegation G- Physical Force: At the 77th Precinct stationhouse, PO Umar Khitab used physical force against § 87(2)(b)

§ 87(2)(b) (02 Board Review) stated that as he was being walked in to the 77th Precinct stationhouse, that PO Khitab walked in front of the group and punched § 87(2)(b) in his face. The punch caused § 87(2)(b) to stumble forward, and after he stumbled, PO Khitab punched him again on the side of his head. § 87(2)(b) stated that he also saw an officer who he later identified as the same officer seated at the desk inside of the stationhouse, outside in the parking lot.

PO Khitab (06 Board Review) stated that he did not punch § 87(2)(b) and did not otherwise make contact with § 87(2)(b) head. PO Khitab did not observe any other officer punch § 87(2)(b). PO Khitab did not hear § 87(2)(b) complain of being punched, or of pain to his head.

As was noted above, PO Viera (03 Board Review) did not recall being present in the parking lot of the 77th Precinct stationhouse with § 87(2)(b).

Sgt. Quintero was the desk sergeant, and documented § 87(2)(b) arrest in the command log. Sgt. Quintero (05 Board Review) did not recall interacting with § 87(2)(b) going in to the parking lot, or observing § 87(2)(b) get walked in to the stationhouse.

Sgt. Cuevas (07 Board Review), PO Malik (04 Board Review), and PO Riveron (08 Board Review) did not observe PO Khitab punch § 87(2)(b) in his head, or otherwise make contact with § 87(2)(b) head. Sgt. Cuevas, PO Malik, and PO Riveron all stated that they did not punch § 87(2)(b) nor did they see any other officer do so.

§ 87(2)(b) arrest photograph does not depict any visible injuries to his face or head (09 Board Review).

§ 87(2)(b) medical records show that he complained of being punched in the face. The medical records do not specify who he alleged punched him. § 87(2)(b) complained of right ear pain, and lower back pain. § 87(2)(b) was diagnosed with lower back pain and musculoskeletal pain (Privileged Documents).

§ 87(2)(b), § 87(2)(g)

Squad: 12

Investigator: _____
Signature Print Date

Squad Leader: _____

Title/Signature

Print

Date